



**In re Application by ANW to be Appointed as Guardian Ad Litem
over the Affairs of SWM (Miscellaneous Application E009 of 2024)
[2024] KEHC 10696 (KLR) (2 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10696 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E009 OF 2024**

G MUTAI, J

SEPTEMBER 2, 2024

**IN THE MATTER OF SECTION 26, 28(1) AND 28(2) OF THE
MENTAL HEALTH ACT (CAP 248 OF THE LAWS OF KENYA)**

AND

IN THE MATTER OF SWM (A PERSON SUFFERING FROM A MENTAL DISORDER)

AND

**IN THE MATTER OF AN APPLICATION BY ANW TO BE APPOINTED
AS GUARDIAN AD LITEM OVER THE AFFAIRS OF SWM**

IN THE MATTER OF

ANW PETITIONER

RULING

Introduction

1. What is before the Court is the Petition dated 13th March 2024. The Petition was filed by ANW (hereafter “ANW”). ANW is the biological daughter of SWM, the person said to be suffering from mental illness.
2. SWM is a 68-year-old man born in Muranga. I shall hereafter refer to him as the “Patient” or “S”.

The Petition

3. ANW filed the Petition as the Patient’s daughter. She averred that S has advanced dementia and seizure disorder and that, due to his condition, he requires assistance with his daily activities. Reliance was placed on the report of Dr Salim Ahmed, the Head of Neurology at Aga Khan Hospital, Mombasa. A copy of the said report was annexed.



4. ANW urged that S cannot manage and administer his affairs due to his condition. She stated that S purchased a 2-acre parcel of land in Embu, which transaction was the subject of a dispute. She averred that it would be necessary to institute a suit on behalf of S to protect his interests.
5. For the preceding reasons, ANW prayed that S be adjudged as a person suffering from a mental disorder under section 26 of the *Mental Health Act* and that she be appointed a manager of his estate, with the power to take over and or institute any litigation and or claims on behalf of SWM. She also prayed that she be appointed as the guardian over his estate.
6. The Petitioner also filed an application dated 13th March 2024, vide which she prayed for interim reliefs.
7. Due to the nature of the matter and to make the best use of the Court's time, the Court heard the Petition. Thus, the application was abandoned.

The Evidence Adduced in Court

8. The Petition was heard on 7th May and 16th July 2024.
9. The first Witness for the Applicant was the Applicant herself. She stated that she resides in Magongo within the County of Mombasa. She testified that S had been unwell for over six years. ANW prayed for her appointment as the manager of his affairs.
10. The second witness was Ms JNM, the sister of the Petitioner. JNM supported the Petition and expressed her consent to ANW being appointed as a manager of the affairs of the person with mental illness.
11. The doctor, Dr Said Ahmed Omar testified on 16th July 2024. Dr. Ahmed Omar is a consultant physician and neurologist. He practices at Aga Khan and Mombasa Hospitals in Mombasa. He testified that S was his patient and that he had been seeing him since 2022. He testified that S has dementia, which is a loss of cognitive function. In his professional opinion, S's condition would worsen with time, beginning with a loss of abstract and conceptual thinking, followed by challenges of speech and swallowing, and with time, he would have problems with going to the toilet, feeding and clothing. It was his opinion that the condition was irreversible.

Analysis

The Applicable Law

12. Appointment of a manager of the estate of a person with mental illness is made under section 27 of the *Mental Health Act*, as amended in 2022. A manager's duty is to safeguard the property of the Patient. The appointment of a Manager must be published in the Kenya Gazette (section 27(4) of the said *Act*). Any person with probable cause may object to the appointment within 14 days of the publication of the notice. Section 28 (4) of the said *Act* provides that:-

“a manager shall perform the manager's duty under this Act responsibly, taking into account the best interests of the estate of the person who is suffering from mental illness.”

13. Under the *Mental Health Act*, the application for administration may be made by a “supporter” or “representative” of the person with mental illness, in that order. Although ANW is not a “supporter” of the Patient as she wasn't appointed in writing, it is my finding that being the patient's daughter, she is his “representative” within the meaning of the Act and, therefore, has the locus to file the instant Petition.



Analysis of the Facts and the Law

14. In re CWN (a person suffering from mental disorders) [2022]eKLR the Court stated that:-

“The Petitioners have sought to be declared as guardians and managers of the patient. To merit the above orders the petitioners must adduce evidence sufficient to satisfy the Court, firstly that the patient is a person suffering from a mental disorder under the [Mental Health Act](#) and secondly that the patient is incapable of managing her own affairs.”

15. I would add that the third test is whether the application is in the patient's best interest. People with mental illnesses have diminished capacities to manage their affairs, analogous to that of children. Therefore, the court must ensure the application was filed in the Patient's interest. In addition, the court's orders must aim to achieve the said goal.

16. The evidence adduced shows that SWM is 68 years old and has irreversible dementia. The Petitioner averred that the Patient bought land that is the subject of a dispute. There is a need to protect his interests in the said property. Given his condition, the Patient is unable to do so. The Petitioner wants to be appointed as the patient's manager so that she can do so.

17. I have read the reports by Dr Said Salim Omar. I am satisfied that SWM has dementia, which is a form of mental illness. From the applicant's testimony and the medical professional's report, the patient cannot manage his affairs. It will, therefore, be in his best interest that managers/guardians-ad-litem is appointed to manage his estate. The managers/guardians ad litem will ensure that he receives the most appropriate care possible, that his estate is not wasted or lost, and that his interests are protected.

Determination

18. I am satisfied based on the evidence adduced that the patient has advanced dementia and seizure disorder. The said ailment is a mental health disorder. There is, therefore, a case for the appointment of the Petitioner as the manager/*guardian ad litem* of the patient SWM. In the circumstances, I order as follows:-

1. The Petitioner ANW be and is hereby appointed as the manager/guardians ad litem of the Patient, SWM;
2. The manager/*guardian ad litem* shall manage the patient's estate but shall not have the power to sell, charge or otherwise alienate his immovable property without leave of the Court;
3. Pursuant to section 27(4) of the [Mental Health Act](#), the appointment of the manager/guardian ad litem shall be published in the Kenya Gazette;
4. The manager/*guardian ad litem* shall file the inventory/statement of account of the estate of the Patient within six months from the date of her appointment; and
5. I make no orders as to costs.

19. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 2ND DAY OF SEPTEMBER 2024. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE



In the presence of: -

Ms Njeri, for the Applicant; and

Arthur - Court Assistant.

